

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

APR 02 2007

at 1 o'clock and 15 min P.M.  
SUE BEITIA, CLERK

**UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII**

RICK VO

VS.

UNITED STATES OF AMERICA

CASE NO. 02-00411 ACK 01

**MOTION FOR EVIDENTARY HEARING**

NOW comes Petitioner, Rick Vo, in the above entitled matter, and respectfully urges this Honorable Court to conduct an evidentiary hearing on His habeas corpus motion, to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C.A. section 2255.

**I.**

28 U.S.C.A. section 2255 provides in pertinent part that "unless the motion and the files and the records of the case conclusively show that the petitioner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, [and] grant a prompt hearing there on ..."

**II.**

In the instant case the allegations proffered by the Petitioner entitle Him to habeas corpus relief, do not contradict the record nor are they "inherently incredible". Rather, the arguments contained in the motion identify important issues of fact that are not fully developed on record. See *Rosenwald vs. United States*, 898 F. 2d 585, 588 (7<sup>th</sup> Cir. 1990) holding that, (evidentiary hearing should be granted where pivotal issues of fact not fully developed at trial exist).

**III.**

An evidentiary hearing is necessary, in the case at bar, to fully investigate whether counsel's strategy at trial deprived Petitioner of his Sixth Amendment right to effective assistance of counsel. Trial counsel's failure to swiftly and vigorously pursue the key areas identified in His section 2255 motion leave no doubt that the outcome of the trial would have been different, and thereby negating His Sixth Amendment right.


**IV.**

This Honorable Court's actions of requiring the government to respond to Petitioner's claims further the credibility of Petitioner's claim. Petitioner should be allowed to appear before this Honorable Court and more fully develop the record, with the assistance of counsel, in order to answer or respond to any question this Court may have.

**V.**

Based on the foregoing reasons and record of the court this Honorable Court is urged to grant petitioner's motion for an evidentiary hearing.

Respectfully Submitted,

 3-29-07  
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